

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-179

August 1, 2000

BANGOR HYDRO-ELECTRIC COMPANY  
Request for Approval of Amendment to  
Special Rate Contract with Merrill Blueberry  
Farms, Inc.

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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By this Order, we approve an amendment to the special rate contract between Bangor Hydro Electric and Merrill Blueberry Farms, Inc. which unbundles generation service from transmission and distribution service using standard offer service as Merrill's generation service.

On March 1, 2000, Bangor Hydro-Electric Company (BHE) filed with this Commission a request for an extension of time to complete its negotiations to reform its special rate contract with Merrill Blueberry Farms, Inc. (Merrill). BHE said that there was no indication that the parties would not be able to reach agreement in the near future. BHE filed a copy of its proposed amendment to its special rate contract that Merrill had not executed. The amendment generally provides that Merrill shall pay for unbundled T&D service at the pre-amendment bundled electric price minus Merrill's generation costs. However, BHE must agree that Merrill's generation service was obtained diligently. If Merrill does not exercise due diligence, BHE in its reasonable discretion must determine a reasonable market generation price. The amendment is silent on how or who determines whether Merrill exercised due diligence.<sup>1</sup>

On March 10, 2000, BHE filed additional information with this Commission regarding the proposed amendment summarizing the expected T&D price given that Merrill was taking standard offer service. The proposed amendment resulted in a negative T&D kWh usage rate as generation costs exceeded the bundled kWh or usage rate. However, BHE stated that, when the annual customer charge paid at the end of the season is included, Merrill would be making a positive contribution for T&D service. Merrill had not yet executed the amendment.

On March 31, 2000, BHE filed an executed contract amendment with Merrill. The parties modified the price term of the Amendment to ensure that there is no "negative" component to Merrill's usage rate, by eliminating the annual customer charge

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<sup>1</sup> BHE's amendment to unbundle the special rate contract is unusual in that it appears that section 3204(10) contemplates the utility's due diligence determination will be made by the utility before the unbundled contract is executed, rather than after as a matter of future contract administration.

and incorporating that charge into the kWh rate. Accordingly, the Amendment sets forth the amount Merrill shall pay for T&D services on a kWh basis. BHE asked that the Commission find the amendment to be in conformance with 35-A M.R.S.A. § 3204(10) and approve the amendment pursuant to 35-A M.R.S.A. § 703(3-A).

In its March 31 letter, BHE reported that Merrill was unable to obtain alternative generation service and will use the standard offer service. As a blueberry processor, Merrill is a seasonal load, taking service only from July to September. BHE determined that Merrill had acted with due diligence in attempting to obtain low-cost generation but because of its size and seasonal load was unable to obtain service at a lower price than standard offer service. By letter on June 13, 2000, BHE confirmed that Merrill had continued to seek to obtain competitive generation service at prices lower than standard offer, but had not been able to do so.

BHE submitted copies of requests made by Merrill to competitive energy providers as well as some responses to document the steps that Merrill had taken to secure generation service. We have reviewed the materials submitted by BHE and agree with BHE that Merrill has exercised due diligence by obtaining generation service from the standard offer. Additionally, we prefer BHE's executed amendment that restructures the "unbundled" rate elements to eliminate the customer change, rather than the proposed amendment which would have required negative T&D kWh rates. We find the March 31, 2000 contract amendment conforms to the requirements of 35-A M.R.S.A. § 3204(10), and accordingly, we approve the amendment pursuant to 35-A M.R.S.A. § 703(3-A).

Dated at Augusta, Maine, this 1st day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

THIS ORDER HAS BEEN DESIGNATED FOR PUBLICATION.

### NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.